

**IN THE UNITED STATES DISTRICT COURTS FOR
THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ROY AUTRY,
Plaintiff,

v.

Cause No. 3:19-cv-00154

AHERN RENTALS, INC. dba
AHERN RENTALS AND SALES,
Defendant.

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff ROY AUTRY ("Employee Autry" or "Plaintiff") now files his First Amended Complaint against Defendant AHERN RENTALS, INC. dba AHERN RENTALS AND SALES ("Employer Ahern" or "Defendant") and respectfully shows as follows:

I. PARTIES

1. Plaintiff, Roy Autry, is a natural person residing in El Paso County, Texas.
2. Defendant, Ahern Rentals, Inc. dba Ahern Rentals and Sales, is a foreign corporation organized under the laws of the State of Nevada, and may be served with process by serving its registered agent, InCorp Services, Inc., at 815 Brazos St., Ste. 500, Austin, Texas 78701.

II. JURISDICTION

3. Jurisdiction is proper in this Honorable Court based on federal question jurisdiction.

III. CHRONOLOGY OF FACTS

4. Employers must prevent bigoted supervisors from treating employees differently just because of their race to protect employees, like us all, from emotional traumas and financial losses from illegal discrimination.

5. Employers must prevent bigoted supervisors from treating employees differently just because of their national origin to protect employees, like us all, from emotional traumas and financial losses from illegal discrimination.
6. Employers must prevent job retaliation by bigoted executives and managers against employees who oppose and report illegal racial or national origin discrimination at work and protect employees, like us all, from emotional trauma and financial losses due to job terminations.
7. Employers must prevent job retaliation against employees who testify or are about to testify in a workers' compensation proceeding and protect employees, like us all, from emotional trauma and financial losses due to job terminations.
8. Ahern Rentals, Inc. dba Ahern Rentals and Sales is an employer.
9. Employer Ahern must prevent its bigoted supervisors from treating employees differently just because of their race to protect employees, like us all, from emotional traumas and financial losses from race discrimination.
10. Employer Ahern must prevent its bigoted supervisors from treating employees differently just because of their national origin to protect employees, like us all, from emotional traumas and financial losses from national origin discrimination.
11. Employer Ahern must prevent job retaliation by bigoted executives and managers against employees who oppose and report illegal racial or national origin discrimination at work and protect employees, like us all, from emotional trauma and financial losses due to job terminations.
12. Employer Ahern must prevent job retaliation by bigoted executives and managers against employees who testify or are about to testify in a workers' compensation investigation/

proceeding and protect employees, like us all, from emotional trauma and financial losses due to job terminations.

13. On or about August 11, 2014, Employer Ahern hires an Employee as an Outside Sales Representative.
14. Employer Ahern knows the Employee is an American citizen of Mexican descent.
15. Employer Ahern knows the Employee resides in Ciudad Juarez, Chihuahua, Mexico.
16. Employer Ahern General Manager Curtis Torres and Employer Ahern Sales Manager Kevin Harley tell a group of employees, including Ruben Clemente and Joelle, to call 911 immediately if the Employee shows up at the branch because the Employee is “connected to a cartel.”
17. Employer Ahern Sales Manager Harley tells the Employee to stay out of the office when Harley is there, and requires the Employee to let the office know when the Employee will be coming.
18. **Employer Ahern Vice President of Operations** Bob Bonuchi accuses the Employee of being part of a cartel, and says “I don’t want to be part of that Mexican shit.”
19. **Employer Ahern Vice President of Sales** Anthony Botshaw and Employer Ahern Vice President Brandon Hobbs tell the Employee that “Mexicans don’t barbecue because beans go through the grill.”
20. Employer Ahern General Manager Curtis Torres refers to himself as a “coconut” and tells the Employee that General Manager Torres does not “speak that shit” in reference to Spanish.
21. **Employer’s VP of Sales Botshaw** tells the Employee that African American people

- smell “because God wanted the blind people to know where they are.”
22. Employer’s Sales Manager Harley warns employees not to “piss Ray off because he will send people to kick your ass.”
 23. **Employer Ahern CEO** Mark Brown says he needs someone to go to Juarez and get him “a girl”.
 24. **CEO** Mark Brown sends the Employee a picture of Pancho Villa and asks “Which Mexican is this?”
 25. Employer’s General Manager Curtis Torres tells the Employee, at a company meeting, that employees *can* call a phone number to make a report to Employer Ahern’s Human Resources Department about discrimination but, if an employee does call HR, that Employee will be retaliated against.
 26. **Employer Ahern CEO** Mark Brown tells the Employee, at a company meeting, that if Employer Ahern’s Human Resources Department receives one more complaint from the El Paso office, Employer Ahern CEO Mark Brown will fire the whole sales force, *including* the complaining Employee.
 27. **Employer’s VP of Operations** Bonuchi, while on a speaker phone at a sales meeting, tells the Employee that Mexicans do not play golf.
 28. **Ahern VP of Operations** Bonuchi, like most bigots, is ignorant of history, and particularly in this instance, of the storied career of Lee Trevino, one of the legends in the sport of Golf.
 29. Employer’s **VP of Operations** Bonuchi tells the Employee to not take Mexican customers to a golf course in El Paso.
 30. Beginning in mid-2017, and continuing through late-2018, Employer Ahern General

Manager Curtis Torres, along with Employer Ahern Salesman Hector Perez and Employer Ahern Service Manager Gilbert Rodriquez, transfer equipment - which the Employee had rented out or sold - to other salesman at the last minute, causing the Employee to lose sales to clients.

31. Beginning in mid-2017, and continuing through late-2018, Employer Ahern Sales Manager Kevin Harley and Division Sales Manager Kevin Stock receive the Employee's complaints regarding the transferred equipment.
32. On or about November 27, 2018, Employer Ahern receives notice Employer Ahern Salesman Hector Avila, Jr. sustains an on-the-job injury in a car wreck while meeting with clients.
33. On or about November 27, 2018, Employer Ahern receives notice the Employee is a witness to Employer Ahern Salesman Avila's on-the-job injury.
34. On or about November 28-29, 2018, Employer Ahern Sales Manager Kevin Harley meets with the Employee regarding Employer Ahern Salesman Avila's on-the-job injury.
35. On or about November 28-29, 2018, Employer Ahern Sales Manager Kevin Harley urges the Employee to commit perjury to falsely state Employer Ahern Salesman Avila was drinking when Salesman Avila sustained his on-the-job worker's comp injury in a car wreck.
36. On or about November 28-29, 2018, the Employee employee refuses to commit perjury and instead truthfully reports to Sales Manager Harley that the Employee never saw Salesman Avila drink on the night of Salesman Avila's on-the-job worker's comp injury in a car wreck.
37. Less than one week later, on December 5, 2018, Sales Manager Harley terminates this

Employee's employment.

38. Employer Ahern terminates the Employee due to illegal, racial and national origin discrimination, and for opposing Employer Ahern's discriminatory practices and treatment of him, and in part, because the Employee testified or was about to testify in a workers' compensation investigation/proceeding.
39. The Employee is Roy Autry.
40. EMPLOYEE ROY AUTREY, however, IS **NOT** MAKING A CLAIM FOR WORKERS' COMPENSATION RETALIATION or DISCRIMINATION IN THIS CAUSE UNDER TEXAS LABOR CODE SECTION 451.001.

IV. CAUSES OF ACTION

RACE DISCRIMINATION

41. As described above, Employer Ahern, by and through its agents, including General Manager Curtis Torres and Sales Manager Kevin Harley, intentionally and knowingly discriminated against and harassed Employee Autry, a United States citizen, merely because of the color of his skin, his race, ethnicity, and national origin.
42. Thus, Employer Ahern sponsored, encouraged and condoned its agents' racial and national origin discrimination and harassment of Employee Autry.

RETALIATION

43. As described above, Employer Ahern, by and through its agents, including General Manager Curtis Torres and Sales Manager Kevin Harley, intentionally and knowingly retaliated against and harassed Employee Autry, merely because he reported, opposed and witnessed racial and national origin harassment and discrimination in the workplace.
44. Thus, Employer Ahern sponsored, encouraged and condoned its agents' retaliation and

harassment of Employee Autry.

V. DAMAGES AND LOSSES

45. As a direct and proximate result of Defendant's retaliation and conduct against Plaintiff as described above, Plaintiff has suffered harms and losses. Plaintiff's harms and losses include in the past and the future: lost wages and benefits; employment opportunities; lost income; loss of earning capacity; mental anguish; emotional pain and suffering; inconvenience; loss of enjoyment of life; and other non-pecuniary losses.

VI. ATTORNEY'S FEES

46. Pursuant to Title VII, Plaintiff is entitled to reasonable attorney's fees and reasonable expert fees as costs in prosecuting this lawsuit.

VII. JURY DEMAND

47. Plaintiff requests that this case be decided by a jury as allowed by Federal Rule of Civil Procedure 38.

VIII. PRAYER

48. Plaintiff respectfully prays that he recover from Defendant, under Title VII, and Civil Rights Act of 1866, 42 U.S.C. §1981 and the Civil Rights Act of 1991, 42 U.S.C. §1981a, 42 U.S.C. 2000e, *et seq.*, actual damages, including but not limited to, past and future lost earnings, mental anguish and inconvenience, emotional pain and suffering, loss of enjoyment of life, bodily injury, pain and suffering, economic damages and benefits in the past and future, compensatory damages, punitive damages, prejudgment interest, post judgment interest, costs and such other and further relief to which he may show himself to be justly entitled, in law and in equity.

SIGNED on June 11, 2019.

Respectfully submitted,

Chavez Law Firm

2101 N. Stanton Street

El Paso, Texas 79902

(915) 351-7772

(915) 351-7773 facsimile

By: _____

Enrique Chavez, Jr.

State Bar No.: 24001873

enriquechavezjr@chavezlawpc.com

Michael R. Anderson

State Bar No.: 24087103

chavezlawfirm+manderson@chavezlawpc.com

Attorneys for Plaintiff